IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 169 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAJABHAI BIJALBHAI BHARAI - Appellant(s)
Versus
ADMINISTRATIVE OFFICER & 2 - Defendant(s)

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Appearance :

MR MEHUL S SHAH for Appellant(s) : 1,MR SURESH M SHAH for Appellant(s) : 1,
None for Respondent : 1,
None for Respondent : 2,
MR AY KOGJE, AGP for Respondent : 3,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 09/11/2006

ORAL JUDGMENT

1. The appellant-plaintiff, who was removed from the service on the ground of conviction under

charge of Section 326 of Indian Penal Code, filed Civil Suit challenging his removal from the service. It appears that during pendency of the said suit, the plaintiff was reinstated, therefore, the plaintiff withdrew the suit. Subsequent thereto, by order dated 6.2.84, issued by the Administrative Officer from Nagar Prathmik Shikshan Samiti, Upleta, the appellant was informed that in light of the Circular dated 23.10.64, rules contained in Gujarat Civil Service [Discipline & Appeal] Rules, and in view of the order passed by the District Education Officer, the appellant is removed from the services. This time, being aggrieved by the order of second removal, the plaintiff filed suit for a declaration that the order removing him is patently illegal, it deserves to be set aside and a direction be issued in favour of the plaintiff for his reinstatement and consequential benefits.

2. The defendants appeared before the Court and submitted that removal of the plaintiff from the services on the ground of his conviction was in

accordance with law and as there was no violation of Rule 14[2] of Gujarat Civil Service [Discipline & Appeal] Rules, 1971, the Court would not be entitled to make interference in the matter.

3. The learned trial Court, after recording the evidence and hearing the parties, held that the plaintiff was not entitled to any relief. As the appeal proved futile, the plaintiff has filed the present appeal which has been admitted for hearing the parties on 15.9.89 on the following substantial question of law.

> "In the facts and circumstances of the case, whether the order of dismissal at Ex.55 is passed in proper compliance with sub-rule [2] of Rule 14 of the Gujarat Civil Service [Discipline & Appeal] Rules, 1971?"

4. Shri Mehul Shah, learned counsel for the appellant, referring to Rule 14[2] submits that in a case which falls under sub-rule [1] of Rule 14, compliance of sub-rule [2] is mandatory and, in absence of application of mind or the facts which could straightaway persuade the

authority to exercise powers under Rule 14, it cannot be said that the order of dismissal was justified. His further submission is that the order at exh.55 has been made by the Education Committee under the guidance and directions of Education Officer and as the order shows utter non-application of mind, it cannot be allowed to stand.

5. Learned counsel for the respondent, on the other hand, has supported the judgment, submitting, *inter alia,* that Rule 14 in its letter and spirit has been observed and exh.55 does not show non-application of mind. He submits that a true understanding of the said order would show that the authority had exercised its powers in accordance with the circular and the advice given by the Education Officer.

6. It is to be noted at this stage that right from the date of the suit, the plaintiff, under the interim orders granted by different courts had continued in services and stands retired in the year 1993. He has been paid for the work he has done. Present appeal is for the benefits such

as encashment of leave, gratuity, provident fund and pension, if applicable.

7. Rule 14 of 1971 Rules provides as that,

> “14. Special procedure in certain cases.__[1] Nothing contained in rules 8 and 9 shall apply__
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> [i] Where a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge; or
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> [ii] where the Disciplinary Authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the said rules, or
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> [iii] where the Government is satisfied that in the interest of the security of the State, it is not expedient to follow such procedure.
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> [2] In cases to which the provisions of sub-rule[1] shall apply, the Disciplinary Authority may consider the circumstances of the case concerned and pass such order

thereon as it deems fit:

Provided that the Commission shall be consulted before passing such orders in any case in which such consultation is necessary.”

8. Rule 14 is in contraindication to Rules 8 and 9 when it says that nothing contained in Rules 8 and 9 shall apply to particular type of cases. The cases are; [i] Where a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. As we are not concerned with Clauses [ii] and [iii] of sub-rule [1] of Rule 14, I am not referring to the same. In the present case, undisputedly, the petitioner was convicted of a criminal charge and he was removed. Such removal could not be set aside by the Education Committee. Under the Rules, order of dismissal had to be set aside by the appointing authority. If the appointing authority did not set aside the order of dismissal, then, any authority, which is subordinate to the appointing authority could

not issue direction in favour of the delinquent directing that he be reinstated.

9. Sub-rule [2] of Rule 14 provides that in cases to which provisions of sub-rule[1] shall apply, the disciplinary authority may consider the circumstances of the case concerned and pass such order thereon as it deems fit. Shri Shah submits that sub-rule [2] requires application of mind and as exh. 55 shows utter non-application of mind, the order dated 6.2.84 cannot be protected under sub-rule [2] of Rule 14.

10. In the opinion of this Court, the order at exh.55 cannot be read to mean that it has been passed under the dictates of the State Government or of the Education Officer. In fact, the authority has said that in view of the circulars, provisions of law and the advice given by the Education Officer, order of dismissal shall be issued. It cannot be said that exh.55 shows utter non-application of mind. In fact, the said order of dismissal takes into consideration the provisions of law, effect of

the circulars and only then, it refers to the advice given by the Education Officer.

11. I am unable to hold that sub-rule[2] of Rule 14 has not been complied in its letter and spirit.

12. For the reasons aforesaid, I must hold that the learned courts below were justified in dismissing the suit. The Appeal is dismissed. Interim relief is vacated. No costs.

13. As a consequence of the dismissal, the appellant would be deemed to have been removed from the services from 6.2.84 though under the interim orders, he continued to work and draw salary. Once, the interim orders stand vacated on dismissal of the cause and case, the plaintiff would not be entitled to get any benefit from such interim orders. Even after the dismissal of the suit, what I wish to say is that if the plaintiff had worked after 6.2.84 and has been paid for the work done by him the said amount shall not be recovered from him, but simply because the plaintiff had worked under the interim orders issued by the different courts, he would not be entitled to any other benefits

flowing from the service conditions.

14.Let a decree be framed accordingly.

[R.S. GARG, J.]

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